IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.28/2003 &
WRIT PETITION NO. 431/2003

Shri Ravindra Subrai Dalvi,
Flat NO.C-S-40(S), at FR2,
Adarsha Co-operative Housing
Society Ltd.,
Caranzalem, Goa. ..... Petitioner.

V/s.

Shri Prabhakar Govind Sinai Kuvelkar
(expired) through his legal heirs :
1. Mrs. Usha P. Kuvelkar,
2. Dr. Vikas P. Kuvelkar,
3. Mrs. Rupa V. Kuvelkar,
4. Mr. Sudin P. Kuvelkar,
5. Mrs. Aparna S. Kuvelkar,
Resident of Shantinagar, Ponda, Goa. ..... Respondents.

Mr. Nitin Sardesssai, Advocate for the petitioner.

Mr. R. G. Ramani, Advocate for the respondents.

CORAM : P.V. KAKADE, J.

DATE : 6th October, 2006.

ORAL JUDGMENT :

Both these proceedings are filed by the appellant-tenant against the impugned order passed by the Administrative Tribunal, Goa dismissing the appeal and confirming the order of the Rent Controller,

North Goa, Panaji granting the application of the respondent to direct the present appellant to be evicted from the suit premises.

2. I have heard the learned Counsel for both the parties. Perused the record. The respondent made an application to the Rent Controller, North Goa District at Panaji, stating that he was a member of the Adarsha Co-operative Housing Society Ltd., Caranzalem and being a Member of the said Society, was allotted Flat No. C-S-40(5) in the Society's building. He, by Deed of Lease dated 31.12.77, let out the said flat to the present appellant for 11 months on monthly rent of Rs.500/-. However, the said tenancy continued by the respondent after expiry of 11 months as the present respondent was unable to occupy the said flat.

The application was made basically on the ground that there was non-payment of rent from 1.11.1984 and 50 % Municipal taxes. Further it was on the ground that the flat was unoccupied by the present appellant from November, 1995 without reasonable cause. It was also filed on the ground that the lease was signed by the present appellant in favour of third party without the consent of the landlord and finally for personal occupation for himself and his family.

After hearing both the parties, the Rent Controller came to the conclusion that the present respondent-applicant had proved his

allegations and eviction came to be directed. An appeal was preferred before the Administrative Tribunal, Goa which, after, hearing both the parties, concurred with the findings recorded by the Rent Controller and dismissed the appeal. Hence, the present writ petition.

The civil revision application was filed by the applicant seeking to quash and set aside the order passed by the Rent Controller in Eviction Case No.ARC/2Z/8/87 or in the alternative for appropriate order remanding the matter to the Administrative Tribunal to decide the matter on merits of eviction under Section 23-A of the Rent Act.

3. After hearing both the parties at length, it is seen that the Judgment of the Rent Controller is not only cursory and sketchy, but also has not taken into account the various aspects pertaining to the dispute. The present appellant appears to have raised various contentions with regard to not only the provisions of Section 23 of the Rent Act, but also Section 23-A (3) of the said Act submitting that the present respondent was in Government Service upto 31.5.1983 and, therefore, the provisions of Section 23-A(3) of the said Act which came into being in the year 1994, was not applicable to the present dispute, as it was not retrospective in effect. It was also urged that the evidence contemplated by Section 23 of the said Act was not discussed at all. Now, on perusal of the Judgment

of the Rent Controller, it is obvious that there is no application of mind of the Rent Controller which would reflect the discussion of the evidence led by both the parties and it is manifest that the matter is dealt with cursorily, without giving any cogent reasons for the operative order passed therein.

Similarly, the order of the Administrative Tribunal in the appeal also shows that the ground on question of retrospective or prospective effect of the provisions of Section 23A(3) has not been considered at all. It may be noted that mere reference to such provision is not sufficient either for the Rent Controller or for the appellate Court, but what is required is to take into account the legal consequences vis-a-vis the facts involved in the dispute and record findings after giving cogent reasons, which aspect is lacking in both the Judgments of the lower Courts.

4. In view of this position, I am inclined to set aside the orders of both the Courts below and remand the matters for adjudication, afresh, in the light of the observations made hereinabove. Hence, the order :

The writ petition is allowed in terms of prayer clause (a) thereof. Rule is made absolute.

Similarly, the civil revision application is also allowed in terms of prayer clause (aa) thereof. The Judgments and Orders of both the Courts below are, hereby, set aside.

The proceedings in the civil revision application are remanded to the the Rent Controller and Deputy Collector (Revenue), Collectorate, North Goa, at Panaji and the proceedings in the writ petition are remanded to the Administrative Tribunal, Goa for adjudication afresh, after giving opportunity to both the sides to lead evidence, if any, on the issues involved. The proceedings are directed to be disposed of within a period of six months from the date of receipt of the writ of this Court. With these directions both the proceedings stand disposed of with no order as to costs.

P. V. KAKADE, J.

ssm.